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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR 2013-0078, Sequence No. 8]

**Federal Acquisition Regulation; Federal Acquisition Circular
2005-72; Small Entity Compliance Guide**

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This Small Entity Compliance Guide has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2005-72, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005-72, which precedes this document. These documents are also available via the Internet at <http://www.regulations.gov>.

DATES: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005-72 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755.

Rules Listed in FAC 2005-72

<u>Item</u>	<u>Subject</u>	<u>FAR Case</u>	<u>Analyst</u>
*I	Service Contracts Reporting Requirements	2010-010	Loeb
*II	Prioritizing Sources of Supplies and Services for Use by Government	2009-024	Morgan
*III	Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations	2013-005	Petrusek
IV	Trade Agreements Thresholds	2013-021	Davis

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005-72 amends the FAR as specified below:

Item I—Service Contracts Reporting Requirements (FAR Case 2010-010)

This final rule amends the FAR to implement section 743 of Division C of the Consolidated Appropriations Act, 2010. Section 743 calls for certain agencies, not including the

Department of Defense, to submit annual inventories of service contracts. FAR subpart 4.17, Service Contracts Inventory, provides annual reporting requirements for agencies and contractors. Guidance for agencies is available at: <http://www.whitehouse.gov/omb/procurement-service-contract-inventories>. FAR clauses 52.204-14 and 52.204-15 provide contractors' annual reporting requirements. Prime and first-tier contractors will submit the information by October 31 at www.sam.gov, including total dollar amount invoiced for services performed in the prior Government fiscal year and total amount of labor hours for the previous Government fiscal year.

To lessen the burden on small and large business prime contractors, information is reported annually, reporting is phased in over three fiscal years, and only first-tier subcontracts are covered, not all tiers.

Contracting officers will verify that the clause is included in the contract or order. Agencies are responsible for reviewing contractor reported information to ensure it appears reasonable and consistent with available contract information. The agency is not required to address data for which the agency would not normally have supporting information. In the event the agency believes that revisions to the contractor reported information are warranted, the contractor is to be notified no later than November 15. By November 30, the contractor shall revise

the report, or document its rationale for the agency for maintaining the information without change.

Item II—Prioritizing Sources of Supplies and Services for Use by Government (FAR Case 2009-024)

This final rule amends the FAR to update and clarify the priority of sources of supplies and services for use by the Government at FAR subpart 8.0. The final rule also includes a list of other existing Federal contract vehicles to consider for agency use, such as Governmentwide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), and other procurement instruments intended for use by multiple agencies, including blanket purchase agreements under Federal Supply Service contracts. The policy at FAR 7.102(a) is also revised to conform with the amendments to FAR subpart 8.0.

Item III—Terms of Service and Open-Ended Indemnification, and Unenforceability of Unauthorized Obligations (FAR Case 2013-005)

This final rule adopts, without change, an interim rule which was published in the Federal Register at 78 FR 37686 on June 21, 2013. The interim rule amended the FAR to address concerns raised in an opinion from the U.S. Department of Justice Office of Legal Counsel that determined the Anti-Deficiency Act is violated when a Government contracting officer or other employee with the

authority to bind the Government agrees, without statutory authorization or other exception, to an open-ended, unrestricted indemnification clause. This rule clarified for the public that an End User License Agreement, Term of Service, or similar agreement containing an indemnification provision, is unenforceable and nonbinding against the Government and Government-authorized end-users. The rule contained a new clause that applies to all solicitations and contracts and automatically applies to micro-purchases, including those made with the Governmentwide commercial purchase card.

Item IV—Trade Agreements Thresholds (FAR Case 2013-021)

This final rule amends the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: December 19, 2013

William Clark,
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